

dealt in, and the well-known usages of business in this regard amply support its judgment.

The authority of the Congress to enact legislation of this nature was not limited by previous decisions as to the extent of the admiralty jurisdiction. We have had abundant reason to realize that our experience and new conditions give rise to new conceptions of maritime concerns. These may require that former criteria of jurisdiction be abandoned, as, for example, they were abandoned in discarding the doctrine that the admiralty jurisdiction was limited to tidewaters. *The Genesee Chief*, 12 How. 443, overruling *The Thomas Jefferson*, 10 Wheat. 428.

The constitutional validity of the grant of jurisdiction by the Ship Mortgage Act has been sustained in *The Oconee*, 280 Fed. 927, in *The Nanking*, 290 Fed. 769, and in *The Lincoln Land*, 295 Fed. 358.¹² We find no reason for reaching a contrary conclusion in the instant cases.

The decrees of the Circuit Court of Appeals are reversed and the causes are remanded for further proceedings in conformity with this opinion.

Reversed.

LYNCH ET AL. v. NEW YORK EX REL. PIERSON.

CERTIORARI TO THE SUPREME COURT OF NEW YORK.

No. 1. Argued October 9, 1934.—Decided November 5, 1934.

1. Jurisdiction to review a judgment of a state court can not be founded upon surmise or be sustained by reference to briefs and

¹² The validity of the Act was not questioned in *Morse Drydock & Repair Co. v. The Northern Star*, 271 U. S. 552, 555, 556 and its validity has been assumed in several decisions in the lower federal courts. See *The Egeria* (C. C. A. 9th), 294 Fed. 791; *The Northern No. 41* (S. D. Fla.), 297 Fed. 343; *The Red Lion* (E. D. N. Y.), 22 F. (2d) 329; *National Bank v. Enterprise Marine Dock Co.* (C. C. A. 4th), 43 F. (2d) 547; *Consumers Co. v. Goodrich Transit Co.* (C. C. A. 7th), 53 F. (2d) 972.

extrinsic statements. It must appear affirmatively from the record that a federal question was necessarily decided in determining the cause; and if it be uncertain whether the judgment was based upon a federal ground, or upon a non-federal ground sufficient to sustain it, this Court will not take jurisdiction. P. 54.

2. Where the highest court of a State affirms without opinion, and leaves in doubt what, if any, disposition it made of a federal question presented below, it is suggested that, the local practice permitting, application should be made for amendment of the remittitur. P. 55.

Dismissed.

CERTIORARI, 292 U. S. 616, to review a judgment (263 N. Y. 533; 189 N. E. 684) affirming, without opinion, a judgment of the Appellate Division (237 App. Div. 763; 263 N. Y. S. 259) annulling a tax assessment.

Mr. Joseph M. Mesnig, Assistant Attorney General of New York, with whom *Mr. John J. Bennett, Jr.*, Attorney General, and *Mr. Henry Epstein*, Solicitor General, were on the brief, for petitioners.

Mr. Clifton P. Williamson, with whom *Mr. L. A. Doherty* was on the brief, for respondent.

By leave of Court, *Mr. Seth T. Cole* filed a brief on behalf of the Commissioner of Corporations and Taxation of Massachusetts, as *amicus curiae*.

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

The State Tax Commission determined that rental received by the relator, a resident of the State of New York, from real property situated in the State of Ohio, should be included as a part of relator's income for the purpose of computing her income tax under the Tax Law of New York. The relator sought review by the Supreme Court of New York, invoking rights under the Constitution and laws of the State of New York and under the Fourteenth

Amendment of the Constitution of the United States. The Appellate Division of the Supreme Court, Third Department, annulled the determination of the State Tax Commission. 237 App. Div. 763; 263 N. Y. S. 259. That court, while citing decisions of this Court under the Fourteenth Amendment, did not state that its decision rested upon the application of the Constitution of the United States. The Court of Appeals of the State affirmed the order of the Appellate Division, but without opinion, 263 N. Y. 533; 189 N. E. 684, and the grounds of its decision are left to conjecture. It may be surmised, from the quotations in its opinion, that the Appellate Division intended to rest its decision upon a determination of the application of the Fourteenth Amendment, and that the affirmance by the Court of Appeals went upon the same ground, and not upon the non-federal ground of the application of the Constitution and laws of the State. But jurisdiction cannot be founded upon surmise. Nor can claim of jurisdiction be sustained by reference to briefs and statements which are not part of the record.

It is essential to the jurisdiction of this Court in reviewing a decision of a court of a State that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question was necessary to the determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it. *De Saussure v. Gaillard*, 127 U. S. 216, 234; *Johnson v. Risk*, 137 U. S. 300, 306, 307; *Wood Mowing & Reaping Machine Co. v. Skinner*, 139 U. S. 293, 295, 297; *Eustis v. Bolles*, 150 U. S. 361, 366, 367; *Whitney v. California*, 274 U. S. 357, 360, 361; *Mellon v. O'Neil*, 275 U. S. 212, 214. Where the judgment of the state court rests on two grounds, one involving a federal question and the other not, or if it does not appear upon which of

two grounds the judgment was based, and the ground independent of a federal question is sufficient in itself to sustain it, this Court will not take jurisdiction. *Allen v. Arguimbau*, 198 U. S. 149, 154, 155; *Johnson v. Risk*, *supra*; *Wood Mowing & Reaping Machine Co. v. Skinner*, *supra*; *Consolidated Turnpike Co. v. Norfolk & Ocean View Ry. Co.*, 228 U. S. 596, 599; *Cuyahoga River Power Co. v. Northern Realty Co.*, 244 U. S. 300, 302, 304.

Petitioners have made no effort to obtain an amendment by the Court of Appeals of its remittitur, and although, on the oral argument in this Court, attention was directed to the practice in New York to entertain, in proper cases, an application for such an amendment in order to show appropriately the basis of the determination of the state court, no request was made for a continuance to permit such an application.

As the record fails to show jurisdiction in this Court, the writ of certiorari is dismissed as improvidently granted.

Dismissed.

PFLUEGER ET AL. v. SHERMAN ET AL.

ON CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT.

No. 21. Argued October 15, 16, 1934.—Decided November 5, 1934.

1. A certificate from the Circuit Court of Appeals must submit only questions of law, not mixed questions of law and fact, and not such as involve or imply conclusions or judgment by the Court upon the effect of facts adduced in the cause; and they must be distinct and definite. P. 57.
2. The Court can not by a certificate be called upon to answer questions of objectionable generality, or to review proceedings, facts and circumstances for the purpose of deciding a variety of preliminary questions in order to reach and decide an ultimate question submitted. Rule 37. P. 58.

Dismissed.